

SENATE MOTION

MR. PRESIDENT:

I move that Senate Bill 326 be amended to read as follows:

- 1 Page 1, line 3, delete "If there is a sale or transfer of:" and insert "A
- 2 **dealer may not transfer, sell, or assign the business and assets of a**
- 3 **dealership or an interest in the dealership to another person that**
- 4 **contemplates or is conditioned upon a continuation of the franchise**
- 5 **relationship with the manufacturer or distributor unless the dealer**
- 6 **first:**
- 7 (1) **notifies the manufacturer or distributor of the dealer's**
- 8 **decision to make the transfer, assignment, or sale by written**
- 9 **notice; and**
- 10 (2) **obtains the approval of the manufacturer or distributor.**
- 11 **The dealer must provide the manufacturer or distributor with**
- 12 **completed application forms and related information generally**
- 13 **used by the manufacturer or distributor to conduct its review of**
- 14 **such a proposal, and a copy of all agreements regarding the**
- 15 **proposed transfer, assignment, or sale.**
- 16 (b) **The manufacturer or distributor shall send a letter by**
- 17 **certified mail to the dealer within sixty (60) days of receipt of the**
- 18 **information specified in subsection (a). The letter must indicate**
- 19 **any disapproval of the transfer, assignment, or sale and must set**
- 20 **forth the material reasons for the disapproval. If the manufacturer**
- 21 **or distributor does not respond by letter within the sixty (60) day**
- 22 **period, the manufacturer's or distributor's consent to the proposed**
- 23 **transfer, assignment, or sale is considered to have been granted. A**
- 24 **manufacturer or distributor may not unreasonably withhold**
- 25 **approval of a transfer, assignment, or sale.**
- 26 (c) **A manufacturer or distributor has a right of first refusal as**
- 27 **specified in the franchise agreement to acquire the new vehicle**
- 28 **dealer's assets or ownership if there is a proposed change of more**
- 29 **than fifty percent (50%) of the dealer's ownership or the transfer**
- 30 **of more than fifty percent (50%) of the new vehicle dealer's assets**
- 31 **if all of the following are met:**
- 32 (1) **The manufacturer or distributor notifies the dealer in**
- 33 **writing of its intent to exercise its right of first refusal within**

1 the sixty (60) day notice limit provided in subsection (b).

2 (2) The exercise of the right of first refusal will result in the
3 dealer and the dealer's owners receiving consideration, terms,
4 and conditions that are either the same as or better than those
5 they have contracted to receive under the proposed change of
6 more than fifty percent (50%) of the dealer's ownership or the
7 transfer of more than fifty percent (50%) of the new vehicle
8 dealer's assets.

9 (3) The proposed change of the dealership's ownership or the
10 transfer of the new vehicle dealer's assets does not involve the
11 transfer of assets or the transfer or issuance of stock by the
12 dealer or one (1) or more of the dealer's owners to any of the
13 following:

14 (A) A designated family member or members including
15 any of the following members of one (1) or more dealer
16 owners:

17 (i) The spouse.

18 (ii) A child.

19 (iii) A grandchild.

20 (iv) The spouse of a child or a grandchild.

21 (v) A sibling.

22 (vi) A parent.

23 (B) A manager:

24 (i) employed by the dealer in the dealership during the
25 previous four (4) years; and

26 (ii) who is otherwise qualified as a dealer operator.

27 (C) A partnership or corporation controlled by any of the
28 family members described in clause (A).

29 (D) A trust arrangement established or to be established:

30 (i) for the purpose of allowing the new vehicle dealer to
31 continue to qualify as such under the manufacturer's or
32 distributor's standards; or

33 (ii) to provide for the succession of the franchise
34 agreement to designated family members or qualified
35 management in the event of the death or incapacity of
36 the dealer or its principal owner or owners.

37 (4) Except as otherwise provided in this subsection, the
38 manufacturer or distributor agrees to pay the reasonable
39 expenses, including reasonable attorney's fees, that do not
40 exceed the usual, customary, and reasonable fees charged for
41 similar work done for other clients, and that are incurred by
42 the proposed owner or transferee before the manufacturer's
43 or distributor's exercise of its right of first refusal in
44 negotiating and implementing the contract for the proposed
45 change of the dealer ownership or the transfer of the new
46 vehicle dealer's assets. Payment of expenses and attorney's
47 fees is not required if the dealer has failed to submit an
48 accounting of those expenses within twenty (20) days of the

- 1 dealer's receipt of the manufacturer's or distributor's written
 2 request for such an accounting. An expense accounting may
 3 be requested by a manufacturer or distributor before
 4 exercising its right of first refusal.
- 5 (d) Violation of this section by the manufacturer or distributor
 6 is an unfair practice by a manufacturer or distributor.".
- 7 Page 1, delete lines 4 through 17.
- 8 Delete page 2.
- 9 Page 3, delete lines 1 through 35.
- 10 Page 3, line 39, delete "to require, coerce, or attempt to".
- 11 Page 3, line 40, delete "coerce any new motor vehicle dealer in
 12 Indiana".
- 13 Page 3, line 40, delete "either" and insert "**any**".
- 14 Page 3, delete line 42, begin a new line block indented and insert:
 15 "**(1) Require, coerce, or attempt to coerce any new motor**
 16 **vehicle dealer in Indiana to:**
- 17 (A) change location of the dealership;
 18 (B) make any substantial alterations to the use of
 19 franchises; or
 20 (C) make any substantial alterations to the dealership
 21 premises or facilities;
 22 if to do so would be unreasonable or would not be justified by
 23 current economic conditions or reasonable business
 24 considerations. This subdivision does not prevent a
 25 manufacturer or distributor from establishing and enforcing
 26 reasonable facility requirements.
- 27 (2) Require, coerce, or attempt to coerce any new motor
 28 vehicle dealer in Indiana to divest its ownership of or
 29 management in another line make of motor vehicles that the
 30 dealer has established in its dealership facilities with the prior
 31 written approval of the manufacturer or distributor.".
- 32 Page 4, delete lines 1 through 21.
- 33 Page 4, line 22, delete "(2)" and insert "**(3)**".
 (Reference is to SB 326 as printed February 24, 1999.)

Senator MEEKS R